ORIGINAL

COPY

DOW, LOHNES & ALBERTSON, PLLC

ATTORNEYS AT LAW

WASHINGTON, D.C.

JOHN R. FEORE, JR.
DIRECT DIAL 202-776-2786
jfeore@dlalaw.com

1200 NEW HAMPSHIRE AVENUE, N.W. • SUITE 800 • WASHINGTON, D.C. 20036-6802
TELEPHONE 202-776-2000 • FACSIMILE 202-776-2222

ONE RAVINIA DRIVE • SUITE 1600
ATLANTA, GEORGIA 30346-2108
TELEPHONE 770-901-8800
FACSIMILE 770-901-8874

May 23, 2003

VIA HAND DELIVERY

EX PARTE OR LATE FILED

RECEIVED

MAY 2 3 2003

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Marlene H. Dortch, Esquire
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Re: Notification of Ex Parte Communication
MB Docket No. 02-277;
MM Docket Nos. 01-235, 96-197, 01-317 and 00-244

Dear Ms. Dortch:

This is to advise you, in accordance with Section 1.1206 of the FCC's rules, that on May 22, 2003, M. Anne Swanson and I met with Jordan Goldstein, Senior Legal Advisor to Commissioner Michael J. Copps to discuss Paxson Communications Corporation's opposition to any modification or elimination of the UHF Discount as part of the FCC's omnibus biennial review of its broadcast ownership rules. During this meeting, the undersigned outlined the following four principal reasons for retaining the UHF Discount:

1. **The UHF Discount makes it possible to construct new over-the-air broadcast networks that serve niche markets that are underserved by the major networks.** Paxson and Univision have shown that this strategy can work, and have increased the diversity of both over-the-air and cable programming.

2. **The UHF Discount provides a reasonable approximation of the audience-reach handicap that UHF broadcasters face.** The Commission has repeatedly acknowledged the technical inferiority of over-the-air UHF stations. Although cable carriage may boost some stations' coverage above 50%, UHF stations still are unable to reach as many cable headends as their VHF counterparts, meaning that their overall service populations will be smaller. There is no evidence in the record supporting any number other than 50%, and there is no evidence to suggest that a more accurate number exists.

3. **The UHF Discount helps to account for other financial handicaps faced by UHF broadcasters, creating a more level competitive playing field for competing UHF and VHF stations.** These additional financial handicaps include the greater expense of building and operating analog UHF stations and the lower ratings and consequent ad revenues garnered by UHF stations. By allowing owners that hold UHF stations to realize the economies of scale group ownership provides, the UHF Discount reduces these handicaps and allows UHF broadcasters to compete more effectively with their primarily VHF competitors.

4. **Parties were entitled to rely on the Commission's June 2000 decision affirming the UHF Discount until the end of the DTV transition.** The Commission has received no evidence undermining its June 2000 conclusion that would justify frustrating parties' rightful and understandable reliance on that decision.

In addition, the undersigned provided Mr. Goldstein with the attached filings of Paxson Communications Corporation urging the retention of the UHF Discount and copies of the attached filings of Capitol Broadcasting Company urging the elimination of the UHF Discount and asked that Commissioner Copps consider the overwhelming quality and quantity of the record evidence favoring retention of the UHF Discount as opposed to the unsubstantiated conclusory assertions urging elimination of the Discount. The undersigned also cited the FCC's Ninth Annual Report in MB Docket No. 02-145 to show that cable penetration has, in fact, declined since the Commission's June 2000 Biennial Decision.

As required by Section 1.1206(b) of the FCC's rules, two copies of this letter and attachments are being submitted for each of the above-referenced dockets.

Very truly yours,

John R. Feore, Jr.

JRF/mwh
Attachment

cc (w/o encl.): Jordan Goldstein, Esq.

UHF DISCOUNT

RECORD SUBMISSIONS

OF

CAPITOL BROADCASTING

Capitol Broadcasting Company, Inc., 2619 Western Blvd., P.O. Box 12000, Raleigh, NC 27605

DIANNE SMITH
Special Projects Counsel
(919) 821-8933
Fax (919) 890-6095
email: dsmith@cbc-raleigh.com

May 8, 2003

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

RE: EX PARTE NOTICE - MB Docket No. 02-277, MM Docket No. 01-235, 01-317, 00-244

Dear Ms. Dortch:

On May 7, 2003, on behalf of Capitol Broadcasting Company, Inc., I met with Jordan Goldstein of Commissioner Michael Copps' office regarding the UHF discount and other general matters related to the above proceedings.

If there are questions relating to this filing, please contact the undersigned.

Best regards,

/s/ Dianne Smith

Dianne Smith
Special Projects Counsel

Capitol Broadcasting Company, Inc., 2619 Western Blvd., P.O. Box 12000, Raleigh, NC 27605

JIM GOODMON
President & CEO
(919) 821-8504
Fax (919) 821-8733
email: jgoodmon@cbc-raleigh.com

April 24, 2003

VIA FACSIMILE

The Honorable Michael K. Powell
Chairman
Federal Communications Commission
445 12th Street S.W.
Washington, DC 20554

RE: 2002 Biennial Review - Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996 (MB Docket No. 02-277) and Related Proceedings (MM Docket No. 01-235, MM Docket No. 01-317, MM Docket No. 00-244)

Dear Chairman Powell:

On behalf of Capitol Broadcasting Company, Inc. (CBC) and as its third generation chief executive officer, I write to you with immense concern for the public and for the broadcasting community.

This has been a week of mixed emotions. First, it was with great pride that we filed comments in the digital television proceeding on Monday. Second, on Tuesday, it was with confusion and alarm that I read the letter to you from Robert Decherd of Belo Corp. *(See Appendix A.)*

The most disturbing line occurs when Mr. Decherd suggests raising the national television cap to 45% "in return for favorable Commission action on the 'right to reject' and affiliation agreement assignability matters raised in the pending NASA petition." I am perplexed. What does this mean? I am not a lawyer, but aren't these separate issues? Doesn't each need to be reviewed on its own merits or is this "let's make a deal?" I mean no disrespect to Mr. Decherd, you, or the Commission, but this ownership review will change what citizens in every community in America receive on their local news, sports, weather, and public affairs programs, as well as how they receive it, and it will determine the kind of national network programming that ultimately is available in their homes. This debate should not take place with deal making and concessions between a few major media companies and a government agency with appointed, not elected, officials.

During the course of this proceeding, a number of other occurrences have stunned, bewildered, disappointed, and disturbed me, including: the total disregard of the impact of the digital transition on these rules; the lack of discussion about the UHF discount, resulting in our current 35% cap actually being a 70% cap with one group owner already reaching over 61% of the nation's TV households; the mandatory June 2nd rush to judgment date; the reliance on twelve arguably incomplete surveys; the focus on corporate economic interests, with a general disrespect for the public interest, and on nationalism, not localism; the stringent reading of a court case that three times expresses that the court leaves room for the Commission to justify the national cap rule; and the disregard of the public's overwhelming opposition to relaxing the rules.

We at CBC support the public. We believe that more voices are better. We are not willing to trade or compromise the public's future interest for concessions that may benefit us financially.

We have listened to the public – the message is clear – preserve localism and diversity in ownership.

Best regards,

/s/ James F. Goodmon

James F. Goodmon

cc:

The Honorable Kathleen Q. Abernathy
The Honorable Michael J. Copps
The Honorable Kevin J. Martin
The Honorable Jonathan S. Adelstein
W. Kenneth Ferree, Chief of the Media Bureau
U.S. Congress:
Members of the Senate Commerce, Science and Transportation Committee (via hand delivery)
Members of the House Energy and Commerce Committee (via hand delivery)
Nancy Victory, Assistant Secretary, Department of Commerce and National Telecommunications and Information Administration

MB Docket
02-277
01-235
01-317
00-244

EX PARTE OR LATE FILED

ORIGINAL

Before
Federal Communications Commission
Durham, North Carolina

RECEIVED

APR - 9 2003

Federal Communications Commission
Office of the Secretary

Testimony of
James F. Goodmon
On Media Concentration

March 31,2003

Welcome to North Carolina and the Research Triangle Area. I am Jim Goodmon, President and Chief Executive Officer of Capitol Broadcasting Company, Inc., which owns and operates five television stations and one radio station here in North Carolina. I am the third generation president of Capitol Broadcasting, and I am proud that my son, Jimmy, represents the fourth generation.... (grandson Michael would be working with me if it did not violate the child labor laws . . . he is **5** ...)

Broadcast technology has changed and there **are** many NATIONAL cable and satellite channels>>> but one thing is unchanged >>> granting broadcast licenses in the public interest and allocating them by local community with the goal of ***localism*** remains the ***law*** of the land. ***No technology, marketplace changes, statutes, agency regulations or court cases have supplanted, repealed, or vacated localism. Localism*** is as ***necessary to the public interest*** today as it was in **1937** when we received our first broadcast license. Through ***localism,*** we reflect the standards of our individual communities – Raleigh-Durham, Charlotte and Wilmington.

Today localism and, in turn, community standards are under direct fire from those advocating nationalism and corporate objectives. I am here today to respectfully urge the Commission to retain the national television ownership cap and revise the rules as to how stations are counted toward the cap. Based on the fact that more owners provide more diverse voices and real local competition, I also urge the Commission to retain the radio/TV cross-ownership and newspaperbroadcast cross-ownership rules and to study the impact of duopolies and radio consolidation on local communities.

* * * * * *

Maintaining ***(or even reducing)*** the national 35% ownership cap is ***essential*** to localism. If the cap is increased, one thing is certain – we will see the giant conglomerates and their investment bankers lead a flurry of buying and selling. Billions will change hands.. .Remember that deregulation reduced the number of radio station owners by almost one-third. Will television experience the same? What about our **local** communities? What about localism? I don't have a crystal ball; but let's look at what we already know.

- **First, there is NO adequate substitute for local broadcast television.**

  Broadcast television is a different medium – we are different from cable and satellite ...

  #1 Broadcasting (unlike cable and satellite) is free and thus available to the nation's poorest and the nation's richest whether on a 13-inch black and white or a 56-inch HD set.

  #2 Broadcasting is the primary source for local emergency news and weather information.

  #3 Broadcasting is uniquely local with licenses granted by local community.

#4 Broadcasters are actually trustees of the public airwaves – we **are** required by law to serve our local community and to operate our stations in the public interest.

The deregulation advocates argue that because there are hundreds of national cable channels and hundreds of national satellite channels and thousands of national internet sites that the <u>broadcast</u> ownership rules are antiquated... they say that the marketplace has changed. But has it? Not really...

The national cable and satellite networks are not a substitute for local broadcasting....

Local channels remain the dominant medium in the marketplace, because there is *no* adequate substitute for local television. The public votes with the ratings, and localism is still winning in the polls. And although there are new media outlets since my grandfather's day, the voices in the market are actually the ***same*** voices with the broadcast networks owning *three* of the four most popular cable news channels and many of the top Internet sites.

- **<u>Second, current media consolidation is ALREADY undermining localism and the evaluation of community standards.</u>**

Localism and the reflection of community standards are ***indispensable*** components of the public interest, which remains the foundation of broadcasting law. As the networks and other large groups have been allowed to own more and more local stations, the local voice has become a long distance call and community standards have been replaced with corporate economic efficiencies Of particular concern is the ownership of local stations by the networks. Network owned television stations carry the programs they are ordered to carry by the network.. .there is no local decision-making involved. ***Ifthefox owns the henhouse, what prevents the fox from ravaging the hens?***

I would like to quickly tell you about our local **FOX** affiliate...WRAZ. At WRAZ, we decided that we would draw the line on reality programming when the show demeaned marriage and/or family. We therefore did not broadcast, "Who Wants to Marry a Millionaire?" and Married By America.. .we did not broadcast those programs because it was our editorial opinion that these shows did not reflect the standards of our ***local*** community. I am not saying here that we made the right decision ...just that we made a decision. Most network programming is aired without preview by local stations. The right to reject or preempt network programming is a right we take seriously.

Ifthefox owns the hen, can the hen redly reject thefox?

Other specific attacks on localism resulting from media consolidation include central casting, plug and play local news and group programming – all decisions made at the corporate level, often hundreds of miles from the local market, and reflecting corporate policy, not public policy.

- **Third. media consolidation is also affecting the ability of local station owners and small groups to comoete.**

The network and large group owners' negotiating leverage for syndicated programming and satellite and cable multichannel retransmission severely impacts the small owner. Twice recently we have been unable to bid for popular syndicated programming because a group had purchased it for all of its markets. We ask the Commission to assess whether a vertically integrated syndicated programming provider should be required to offe᠁ its programming on a market-by-market bid basis. We also ask the Commission to look at the tying arrangements related to multichannel negotiations with cable owners by the networks.

Finally, we ask the Commission to eliminate the UHF 50% discount and to count duopolies. There is no longer a valid reason for the discount. Today's 35% caps is really a 70% cap...and remember that, more than 95% of all digital licenses are UHF. We urge the Commission to change this rule immediately.

As I stated in my opening remarks, no technology, marketplace changes, statutes, agency regulations or court cases have supplanted, repealed, or vacated localism. Congress ***and*** the Courts each continue to recognize the importance of localism. No one is suggesting that we change the method of granting and allocating licenses in the public interest and by local community. And when the DC Circuit remanded the national ownership rule to the Commission, it stated, "[I] n sum, we cannot say it is unlikely the Commission will be able to justify a future decision to retain the rule."

Commissioners, the future is here. Act in the name of localism. Preserve the ability of local broadcast companies, like Capitol, to still be serving our communities when my five-year old grandson assumes my title.

Thank you for allowing me to testify today.

WRAL

COVERAGE YOU CAN COUNT ON

April 2, 2003

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

RE: **EX PARTE NOTICE** – Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television (MB 03-15& RM 9832); In the Matter of Digital Must Carry (CS 98-120); 2002 Biennial Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996 (MB 02-277)

Dear Ms. Dortch:

On March 31, 2003, on behalf of Capitol Broadcasting Co., Inc., WRAL-TV and WRAL-DT, Jim Goodmon, John Greene, Chuck deCourt, Tom Beauchamp, and I met with Commissioner Michael J. Copps here in Raleigh, North Carolina. We discussed issues related to the digital transition, demonstrated how WRAL-DT is using its digital spectrum, and gave the Commissioner a tour of our digital facility. We also had some discussions regarding the Commission's Notice of Proposed Rulemaking related to ownership issues, particularly the 35% cap and the counting of UHF stations in connection with the 35% calculation.

If there are questions related to this filing, please contact the undersigned.

All the best,

Capitol Broadcasting Company, Inc.

/s/ Dianne Smith

Dianne Smith
Special Projects Counsel

A CBS affiliate
Receptionist Phone: 919.821.8555
WRAL-TV5, Capitol Broadcasting Company, Inc.
Mailing Address: Box 12000, Raleigh, NC 27605
Shipping Address: 2619 Western Boulevard, Raleigh, NC 27606
www.wral.com

Law Offices
HOLLAND & KNIGHT LLP

2099 Pennsylvania Avenue, N.W.
Suite 100
Washington, D.C. 20006

202-955-3000
FAX 202-419-2790
http://www.hklaw.com

March 6, 2003

MARVIN ROSENBERG
(202)457-7147
Internet Address:
mrosenbe@hklaw.com

VIA ELECTRONIC FILING

Marlene H. Dortch, Esquire
Secretary
Federal Communications Commission
The Portals, 445 Twelfth Street, SW
Room TW-A325
Washington, DC 20554

Re: **EX PARTE NOTICE**

In the Matter of 2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, MB Docket No. 02-277

Cross-Ownership of Broadcast Stations and Newspapers, MM Docket No. 01-235

Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets, MM Docket No. 01-317

Definition of Local Markets, MM Docket No. 00-244

Dear Ms. Dortch:

On March 6, 2003, on behalf of Capitol Broadcasting Company, Inc., Jim Goodmon, Dianne Smith and I met with Commissioner Kevin J. Martin and his Legal Adviser on Media Issues, Catherine Crutcher Bohigan, Commissioner

Jonathan S. Adelstein and his Interim Adviser for Media Issues, Sarah Whitesell, and members of the Commission's Ownership Task Force, Robert H. Ratcliffe, Mania Baghdadi, Royce Sherlock, Timothy May, Judith Herman, Marcia Glauberman, and Jamila Bess-Johnson. The focus of the discussion was the Commission's Notice of Proposed Rulemaking in the above-captioned proceeding, in particular the 35% cap and the counting of UHF stations in connection with the 35% calculation.

In the event that there are any questions concerning this matter, please contact the undersigned.

Very truly yours,

HOLLAND & KNIGHT LLP

/s/ Marvin Rosenberg

Marvin Rosenberg
Counsel for Capitol Broadcasting Company

cc: Jim Goodmon
Dianne Smith

WAS1 #1164369 v1

<u>UHF</u> <u>DISCOUNT</u>

RECORD SUBMISSIONS

OF

PAXSON COMMUNICATIONS CORPORATION

DOW, LOHNES & ALBERTSON, PLLC
ATTORNEYS AT LAW
STAMP & RETURN

JOHN R. FEORE, JR.
DIRECT DIAL 202·776·2786
jfeore@dlalaw.com

WASHINGTON, D.C.
1200 NEW HAMPSHIRE AVENUE, N.W. · SUITE 800 · WASHINGTON, D.C. 20036-6802
TELEPHONE 202·776·2000 · FACSIMILE 202·776·2222

ONE RAVINIA DRIVE · SUITE 1600
ATLANTA, GEORGIA 30346-2108
TELEPHONE 770·901·8800
FACSIMILE 770·901·8874

May 16, 2003

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554

Re: Ex Parte Presentation
Supplement to the Record Concerning Retention of the UHF Discount
Biennial Review of Broadcast Ownership Regulations
MB Docket No. 02-277

Dear Ms. Dortch:

Paxson Communications Corporation ("PCC"), by its attorneys, and pursuant to Section 1.1206 of the Commission's rules,[1] hereby submits this written *ex parte* presentation to aid the Commission in resolving questions that have arisen over the past several weeks with respect to retention of the UHF Discount. PCC has argued extensively through Comments, Reply Comments, and its May 7, 2003, written *ex parte* presentation that there is not a shred of evidence in the record of this proceeding that would support modification or elimination of the UHF Discount. PCC also made this fact clear to members of the House Energy and Commerce Committee through the attached letter submitted May 8, 2003.[2] Nonetheless, PCC has learned that questions have arisen on Capitol Hill regarding whether circumstances have changed sufficiently to warrant altering or eliminating the UHF Discount and whether empirical evidence supports retention of the current rule. PCC believes that the record provides unequivocal answers to both questions – ample evidence conclusively demonstrates that circumstances have not changed sufficiently to justify alteration or elimination of the UHF Discount. This letter should lay to rest any lingering doubts about retaining the UHF Discount so long as analog broadcasting continues and should serve as a departure point for the future debate about whether the rule will be appropriate in the DTV era.

The Realities of UHF Broadcasting Continue To Demand the UHF Discount

The competitive handicaps inherent in UHF broadcasting continue to justify the UHF Discount. Despite changes in the broadcast television marketplace since the adoption of the UHF Discount in 1985, the Commission properly recognized in June 2000 that competitive

---

[1] 47 C.F.R. § 1.1206.

[2] *See* Attachment 1.

conditions then continued to support the rule.[3] The changes in UHF broadcasters' position cited by opponents of the UHF Discount, *i.e.* the advent of analog TV must-carry and the increase in viewers receiving television service by cable and satellite MVPDs, had largely taken shape by June 2000 and have changed little over the past three years. As the Commission found, these changes do not eliminate the need for the UHF Discount. That finding remains as true today as it was three years ago. In both the current and most recent Biennial Reviews, PCC, along with NAB, Granite Broadcasting, and Univision have submitted substantial evidence demonstrating that:

- UHF stations continue to be more expensive to construct and operate than VHF stations;[4]
- UHF signals continue to be technically inferior to VHF signals;[5]
- UHF signals continue to be unable to reach over-the-air audiences comparable to those of VHF stations;[6]
- UHF stations still do not gain cable carriage comparable to VHF stations;[7]
- UHF stations still do not receive ratings as high as those of VHF stations;[8]
- and consequently, UHF stations still are not as financially successful as their VHF competitors.[9]

---

[3] *See* 1998 Biennial Regulatory Review - Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, *Biennial Review Report*, 15 FCC Rcd 11058, 11078 ("*1998 Biennial Review*").

[4] *See* Attachment 2 (originally submitted as Exhibit A to Comments of Paxson Communications Corporation, MM Docket No. 98-35, filed July 21, 1998.). *See also, e.g.*, Univision Comments at 4; Paxson Comments at 17-18; Paxson Reply Comments at 8; Supplement to the Record Concerning Retention of the UHF Discount, MB Docket No. 02-277, filed May 7, 2003, Attachment C at 5-8 ("UHF *Ex Parte*"). *Accord*, *1998 Biennial Review*, 15 FCC Rcd 11078.

[5] *See* Univision Reply Comments at 3; Granite Comments at 6; Paxson Comments at 15-16. *See also 1998 Biennial Review*, 15 FCC Rcd 11078-79.

[6] *See* Paxson Comments at 17; Univision Reply Comments at 3-4.

[7] *See* Granite Comments at 6; Univision Reply Comments at 8-9; Paxson Comments at 16-17. *See also 1998 Biennial Review*, 15 FCC Rcd 11078.

[8] *See* UHF *Ex Parte*, Attachment A (originally included as Appendices C to Comments of the National Association of Broadcasters, MM Docket No. 98-35, filed July 21, 1998).

[9] *See* UHF *Ex Parte*, Attachments A-B (originally included as Appendices C to Comments of the National Association of Broadcasters, MM Docket No. 98-35, filed July 2 , 1998).

Neither cable carriage nor increased MVPD subscribership have or can effectively remedy these handicaps. Indeed, as PCC has shown, cable carriage only codifies UHF broadcasters' limited signal reach because carriage is guaranteed only on cable systems to which a good quality signal is delivered. The alternative – providing additional technical support to distant cable head-ends – only imposes additional costs on already financially burdened UHF stations. These real-world facts formed the basis for the Commission's decision in the *1998 Biennial Review*,[10] and, as Granite demonstrated in its Reply Comments, none of these facts have changed.[11] The Commission consequently has no evidentiary basis for altering its well-reasoned earlier decision.

Far from justifying abandonment of the UHF Discount, the growth in MVPD penetration and subscribership actually supports continuation of the Discount because that growth has placed the free-over-the-air American broadcasting system at risk. Many marginal UHF stations are only likely to survive by utilizing the economies of scale made possible by group ownership. Particularly during the resource-draining DTV transition, removing a support mechanism like the UHF Discount would be unwise, and could lead to a reduction in broadcast television service to vulnerable small and mid-sized communities. Although the overall range of media choices the average American consumer can access has increased over the past 20 years, broadcast television remains the cheapest, most reliable, and most easily accessible local information source. The diminution of service likely to result from alteration or elimination of the UHF Discount would therefore have a significant negative impact on localism and diversity in communities around the country. Accordingly, now more than ever, the UHF Discount is a necessary part of the Commission's broadcast ownership regulations.

Ample Empirical Evidence Supports the UHF Discount

Questions also have been raised regarding the extent to which the empirical evidence in the Commission's record in this Biennial Review demonstrates the continuing necessity of the UHF Discount. In an *ex parte* filing on May 7, 2003, PCC detailed for the Commission the extensive evidentiary record that supports continuation of the UHF Discount.[12] PCC cited evidence from both the current and 1998 Biennial Review proceedings including:

- evidence from Granite that UHF broadcasters' circumstances have not changed appreciably since the UHF Discount was upheld in June 2000;
- evidence from Univision and Paxson demonstrating that the UHF Discount enables broadcasters to economically reach underserved markets by developing new competitive networks serving, for example, minority communities and viewers interested in family-values and faith-based programming;

---

[10] *See 1998 Biennial*, 15 FCC Rcd 11078-79.

[11] *See* Granite Reply Comments at 5-6.

[12] *See* Supplement to the Record Concerning Retention of the Uhf Discount, MB Docket No. 02-277, filed May 7, 2003.

- evidence from Univision and Paxson that UHF broadcasters are experiencing new interference from DTV stations, further handicapping their ability to serve their communities; and
- evidence from NAB demonstrating the technical and financial handicaps inherent in UHF broadcasting.

Paxson also submits with this letter a chart illustrating facts the Commission already has found – that the greater expense of building and operating analog UHF stations is a substantial handicap for broadcasters.[13] These pieces of evidence, among others, conclusively show that the UHF Discount remains necessary in the analog world.

In addition, PCC has submitted evidence to the House Energy and Commerce Committee that demonstrates that the current competitive disparities between analog UHF and VHF stations are likely to persist even after the DTV transition is complete. Power level comparisons between PCC's UHF stations and their VHF competitors show that – consistent with the Commission's policy of allowing current stations to replicate their service areas – the VHF stations have, in many cases, been granted considerably higher power than the Paxson UHF stations.[14]

In many markets, these power disparities lead to population coverage disparities that translate directly into lower revenues. Attachment 3 to this letter shows the DTV population disparity of several PCC DTV stations as compared to their current analog VHF competitors' DTV stations. These population figures represent PCC's maximized facilities, so Attachment 3 already reflects the full extent to which the Commission's DTV maximization policies will allow these stations to equalize their DTV competitive position with respect to these competitors. In some cases, the difference in population coverage is particularly stark. For example, WGPX-DT, PCC's station in the Greensboro-High Point-Winston Salem DMA, reaches less than 36% of the viewers reached by WFMY-DT, one of PCC's VHF competitors in that market. The Commission must keep in mind that the future population coverage disparities described by Attachment 3 will be in addition to the other legacy handicaps that former analog UHF broadcasters will carry forward into the DTV era, such as a history of lower viewer ratings, non-network affiliation, and financial underperformance. Thus, to declare at this point that maximization has made UHF stations the equal of their current analog VHF competitors would be contrary to what the Commission already knows. Given the many uncertainties regarding stations' actual future DTV operations, the evidence before the Commission clearly compels delay in deciding whether to retain the UHF Discount after the DTV transition is complete.

Thus, considerable evidence shows not only the ongoing need for the UHF Discount in the current analog world, but also the potential that the need will carry over to the digital world as well. This only serves to confirm the wisdom of the Commission's stated intention to

---

[13] *See* Attachment 2.

[14] *See* Attachment 1.

reconsider the UHF Discount only once the transition is far enough along to provide an accurate picture of the public interest in the DTV world.[15]

Loosening the National Ownership Cap Does not Justify Altering the UHF Discount

PCC also understands that concerns have arisen as to whether maintaining the UHF Discount is logically consistent with loosening the national ownership cap. Given the different aims and effects of these two rules, such a course would not only be intellectually consistent but a sound policy approach. The national ownership cap is meant to foster a diversity of voices in every local market by limiting the number of markets any one broadcaster can reach. The UHF Discount, on the other hand, is designed to ensure that no broadcaster is credited with reaching a substantial number of viewers that it does not, in fact, reach. In that respect, the UHF Discount acts as a corrective measure, rationalizing the limitations placed on broadcasters by the national ownership cap, and is fundamentally deregulatory in nature. The 1996 Telecommunications Act instituted the Biennial Ownership Review process to determine whether the national ownership cap remains "necessary in the public interest." This inquiry has no bearing, however, on whether a corrective rule like the UHF Discount remains necessary to ensure that broadcasters that own UHF stations are not unfairly handicapped in reaching as many viewers as they are permitted by law. As PCC has shown, due to the continuing technical and financial handicaps borne by UHF broadcasters, the 50% discount remains a reasonable approximation of the number of viewers actually reached by UHF broadcasters regardless of the programming or ownership diversity of the other voices in each media market.

Indeed, by ensuring the economic viability of UHF broadcasting, the UHF Discount ensures added diversity in local markets. As described in the record before the FCC, Univision has been able to take advantage of the economies of scale offered by the UHF Discount to offer Spanish-language programming across the country. PCC utilized the same strategy to create PAXTV, the nation's seventh broadcast network, which offers family-values and faith-based programming to an often overlooked and underserved market. Given its stunning record of encouraging new and diverse programming in local television programming markets, and the hard facts regarding UHF broadcasting's continuing technical and financial handicaps, it is hard to understand why the UHF Discount has come under such searching review at this time. Accordingly, the Commission should reject the facile argument that loosening of the national ownership cap somehow justifies an elimination of the UHF Discount.

Conclusion

There can be no doubt about what the evidence in this proceeding demands: **all the evidence before the Commission** supports retention of the UHF Discount for as long as analog broadcasting remains the chief television broadcasting format. Moreover, retaining the UHF Discount would serve every Commission policy that the Discount implicates. The time for debating the retention of the rule in the DTV era is not yet ripe, but already substantial evidence exists to indicate that the rule will remain necessary even after the DTV transition. In any case,

[15] *See* 1998 Biennial Review, 15 FCC Rcd 11079.

no relevant circumstances facing UHF broadcasters have changed since the Commission last upheld the UHF Discount just three years ago. Accordingly, retention of the rule remains necessary in the public interest, and the Commission should reject all invitations to convert this Biennial Review into a vehicle for re-regulating UHF broadcasters without justification.

Respectfully Submitted,

John R. Feore by JRA

John R. Feore, Jr.
Counsel for Paxson Communications Corporation

Attachments

cc w/ attachments:

Chairman Michael K. Powell
Commissioner Kathleen Q. Abernathy
Commissioner Kevin J. Martin
Commissioner Michael J. Copps
Commissioner Jonathan S. Adelstein
W. Kenneth Ferree, Chief, Media Bureau
Paul Gallant, Special Advisor, Media Ownership Working Group

bcc: w/ attachments:

Lowell W. Paxson
William L. Watson

bbcc w/attachments:

Jason E. Rademacher
Susan E. Anderson

ATTACHMENT 1

P X

May 8, 2003

The Honorable John D. Dingell
United States House of Representatives
Washington, DC 20515

Re: Retention of the UHF Discount

Dear Congressman Dingell:

I am writing on a matter of critical importance to Paxson Communications Corporation ("PCC") and other UHF television broadcasters throughout the country. I understand that you may push in Congress and at the FCC for repeal of the UHF Discount. With respect, it is my firm belief that the UHF Discount remains absolutely essential to enable UHF broadcasters in a given market to compete on a relatively even footing with their VHF counterparts. Again, with respect, I submit that all of the factual evidence--as opposed to just three conclusory pleadings and a single *ex parte* filing--presented to the FCC on this matter in the current *Biennial Review of Broadcast Ownership Regulations* (MB Docket No. 02-277) illustrate the continuing need for the UHF Discount. As you consider this issue, I would ask that you bear the following facts in mind.

The UHF Discount Is Essential For Existing Analog Stations

Less than three years ago, in its *1998 Biennial Review*, the FCC concluded that the UHF Discount remained "necessary in the public interest" to equalize the competitive positions of UHF and VHF broadcasters. This conclusion was premised on two key findings: first, that inherent and insurmountable technical limitations prevent UHF stations from reaching as great a number of over-the-air viewers and cable headends with a quality signal as VHF stations; and, second, that higher operating expenses for UHF stations place them at a competitive disadvantage. Nothing has occurred in the three years since that conclusion to diminish the need for the UHF Discount. In fact, proponents of the UHF Discount, including PCC, Univision, Granite Broadcasting ("Granite"), and the National Association of Broadcasters ("NAB"), have presented ample evidence to the FCC demonstrating the need to retain the UHF Discount.

Univision, for example, provided significant evidence that the UHF Discount helps it to reach minority households in many of its markets, which tend to have low cable subscribership. PCC and Univision also provided evidence that the activation of new DTV stations is creating additional interference to analog UHF stations with the accompanying loss of service. This plainly refutes any suggestion that the DTV transition itself is ameliorating the competitive disparity between VHF and UHF stations or that eliminating the UHF Discount prior to the close

Paxson Communications Corporation 601 Clearwater Park Road West Palm Beach FL 33401
561 659 4122 Fax 561 655 9424 www.pax.tv
An American Stock Exchange Company (AMEX PAX)

of the DTV transition would be prudent policy. Factual evidence presented to the FCC by the NAB and PCC in the last two *Biennial Review* proceedings continue to conclusively demonstrate:

- that UHF signals are technically inferior to VHF signals;
- that UHF signals are unable to reach over-the-air audiences comparable to those of VHF stations;
- that UHF stations do not gain cable carriage comparable to VHF stations;
- that UHF stations do not receive ratings as high as those of VHF stations;
- and that consequently, UHF stations are not as financially successful as their VHF competitors;

The fact is that in the analog world, UHF stations simply do not have the ability to reach anything approaching every household in their DMAs, even when cable carriage is considered. For example, in some cases PCC stations cover as little as 27% of the area covered by VHF stations in the same market. Because cable carriage is based on a station's ability to deliver a quality signal to a sometimes distant headend, it is not surprising that UHF stations would be unable to garner the same level of cable carriage as their VHF counterparts. These types of disparities continue to exist and, with the additional DTV-generated interference noted by Univision and PCC, will only be made worse as additional DTV stations commence full power operations.

Therefore, counting each UHF station as reaching only 50% of the households in its DMA allows station-group operators like PCC and Univision to use the UHF Discount to acquire and operate stations that otherwise might fail, enabling them to serve niche audiences that are frankly underserved by the Big Four networks. Rather than seeking ways to curtail UHF broadcasting by eliminating the Discount, I urge you to seek ways to encourage this type of service to the public.

<u>The UHF Discount Will Continue To Be Needed In The Digital World</u>

While completion of the DTV transition <u>might</u> make it appropriate to then review the UHF Discount, it is clear that the DTV transition has not progressed sufficiently to make that critical decision at this time because there simply is no record on which to be certain that the UHF Discount will not be needed in the post-transition world. As described above, what is certain is that the transition itself is harming analog UHF broadcasters' ability to serve their viewers, and that such harm is only likely to increase as the transition progresses. Accordingly, eliminating the UHF Discount now based on the possibility of future obsolescence would be a grave error based on unsubstantiated speculation.